

temporary license if not renewed by the Authority and if a license has not been approved by the Authority.

(e) In its discretion, the Authority may renew a temporary license for incremental periods of six months at a time prior to its receipt, review and approval of a regular application if such renewal is necessary to prevent or ameliorate a hazard to the public health, safety or to the environment; to prevent economic hardship to a public body; or if the renewal of a temporary license otherwise serves some interest of the general public.

(f) The renewal of a temporary license in all cases is conditional upon the applicant or permittee signing an agreement that it will cease its wastewater operations upon the expiration date of the temporary license if not renewed by the Authority and a license has not been approved by the Authority or any other Territorial or federal governmental agency with authority to do so.

### **29 VIRR §496c2.21: Change of Information**

(a) Where an applicant or permittee has an application pending before the Authority and any of the information required to be included in a disclosure statement changes, or any additional information should be added after the filing of the statement, the applicant or permittee shall provide that information to the Authority in writing within 30 days of the change or addition.

(b) Licensees shall report to the Authority within 30 days any changes or additions in the following information required to be included in the disclosure statement:

1. The name of the licensee;
2. The names or identities of any officers, directors, partners or key employees of the licensee;
3. Unless previously disclosed, the names or identities of any holders of equity in or debt liability of the licensee, if they would have been required on the original disclosure statement;
4. The name and business address of any company which collects, transports, treats, stores, transfers or disposes of wastewater in which the licensee has acquired an equity interest;
5. A listing and explanation of any notices of violation, administrative orders or license or permit revocations issued by any Territory, State or Federal authority, including OSHA, except that notices issued by the Authority and notices demanding a penalty of less than \$5,000 and not involving an intent to revoke a license or permit need only be reported annually; and,
6. Any criminal conviction entered against the licensee or against any key employee, officer, director or equity holder required to be disclosed, or partner thereof, other than for a motor vehicle offense unless said vehicle offense involved a vehicle used for the collection and transportation of wastewater, or hazardous waste;

(c) All changes to the information contained in a permittee's or licensee's disclosure statement currently on file with the Authority shall be reported on an annual update to be filed with the Authority at the time of the permittees or licensee's annual renewal of its registration with the Authority; provided, however, that amending or updating of Personal History Disclosure Forms other than to report a criminal conviction, is not required unless specifically requested by the Authority.

(d) Changes of information required to be filed within 30 days pursuant to (b) above may be filed by letter, on amendment forms supplied by the Authority, or on copies of applicable portions of disclosure statement forms. The person filing the report of change shall swear to or affirm the truth of the information contained therein.

(e) Annual updates shall be filed on amendment forms supplied by the Authority, or on copies of applicable portions of the disclosure statement or Personal History Disclosure Form. Annual updates shall include a recapitulation of any changes previously reported on a 30-day notice.

(f) Changes of information shall be filed by submitting an original and one confirmed copy to the Authority.

(g) Annual updates shall be sworn to or affirmed and subscribed in the manner prescribed for original disclosure statements.

(h) Where an applicant, permittee or licensee has submitted multiple amendments to its disclosure statement; or the information concerning an applicant, permittee or licensee has undergone substantial change; or if the disclosure statement currently on file with the Authority is more than five years old, the Authority, in its discretion, may require the applicant, permittee or licensee to file a new disclosure statement.

## **29 VIRR § 496c2.22: Qualification of Applicant**

(a) No permit shall be approved by the Authority unless the Authority finds that the applicant or permittee has been truthful and cooperative in the collection, transportation, treatment, storage, transfer or disposal of wastewater, has exhibited sufficient integrity, reliability, expertise, and competency to engage in the collection or transportation of wastewater, given the potential economic consequences for affected island ratepayers or significant adverse impacts upon human health and the environment which could result from the irresponsible participation therein or operation thereof, or if no prior record exists, that the applicant or permittee is likely to exhibit the competence required.

(b) No permit shall be approved by the Authority if any person required to be listed in the disclosure statement, or otherwise shown to have a beneficial interest in the business of the applicant, the permittee or the licensee, has been convicted of any of the following crimes under the laws of the Virgin Islands or the equivalent thereof under the laws of any other Territory, State or federal jurisdiction:

1. Murder;
2. Kidnapping;
3. Rape;
4. Robbery;
5. Bribery;

6. Extortion;
  7. Criminal usury;
  8. Arson;
  9. Burglary;
  10. Forgery and fraudulent practices;
  11. Fraud in the offering, sale or purchase of securities;
  12. Alteration of motor vehicle identification numbers;
  13. Unlawful manufacture, purchase, use or transfer of firearms;
  14. Unlawful possession or use of destructive devices or explosives;
  15. Violation of narcotic trafficking laws;
  16. Racketeering;
  17. Violation of criminal provisions of Virgin Islands Antitrust laws;
  18. Any purposeful, knowing, willful or reckless violation of the criminal provision of any federal or state environmental protection laws, rules, or regulations, including, but not limited to wastewater, or hazardous waste management laws or regulations;
  19. Violation of any laws involving terrorism; or
  20. Perjury or false swearing.
- (c) Notwithstanding the provisions of (b) above, no applicant permittee shall be denied a permit based upon the conviction of any individual required to be listed in the disclosure statement, or shown to have a beneficial interest in the business of the applicant or permittee for the offenses enumerated above if the person has affirmatively demonstrated by clear and convincing evidence by judicial records of his or her rehabilitation. However, no license shall be approved if a person required to be listed on the disclosure statement is determined to be a career or habitual offender after a review of judicial records, the application and disclosure statements.
- (d) Incomplete or inaccurate applications will not be processed and will be returned to the applicant for revision.
- (e) The Authority shall evaluate the data furnished by the applicant and may require additional information. Within thirty (30) days of receipt of a complete wastewater discharge permit application the Authority will determine whether or not to issue a wastewater discharge permit. The Authority may deny any application for a wastewater discharge permit for good cause.

**29 VIRR § 496c2.23: Wastewater Discharge Permit Duration**

A wastewater discharge permit shall be issued for a specified period, not to exceed three (3) years from the effective date of the permit. A wastewater discharge permit may be issued for a period less than three (3) years at the discretion of the Authority. Each wastewater discharge permit will indicate a specific expiration date.

**29 VIRR § 496c2.24: Wastewater Discharge Permit Contents**

A wastewater discharge permit shall include such conditions as are deemed reasonably necessary by the Authority to prevent pass through or interference, protect the quality of the body of water receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal and protect against damage to the treatment works.

(a) The wastewater discharge permits shall contain, at a minimum:

- (1) A statement that indicates wastewater discharge permit duration, which in no event shall exceed three (3) years;
- (2) A statement that the wastewater discharge permit is nontransferable;
- (3) Effluent limits based on applicable pretreatment standards;
- (4) Self monitoring, sampling, reporting, notification, and record-keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on Federal and Territorial law; and
- (5) A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements and any applicable compliance schedule.

(b) The wastewater discharge permits may contain, but need not be limited to, the following conditions:

- (1) Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;
- (2) Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;
- (3) Requirements for the development and implementation of spill control countermeasure plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or non-routine discharges;
- (4) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the publicly owned treatment works;
- (5) The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the publicly owned treatment works;
- (6) Requirements for installation and maintenance of inspection and sampling facilities and equipment;
- (7) A statement that persons with the wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable Federal and Territorial pretreatment standards, including those which become effective during the term of the wastewater discharge permit; and
- (8) Other conditions as deemed appropriate by the Authority to ensure compliance with these rules and regulations, and Territorial and Federal laws.

- (a) The applicant may petition the Authority to reconsider the terms of a wastewater discharge permit or denial within ten (10) days of notice of its issuance or denial.
- (b) Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal.
- (c) In its petition, the appealing party must indicate the wastewater discharge permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the wastewater discharge permit.
- (d) The effectiveness of the wastewater discharge permit shall not be stayed pending the appeal.
- (e) If the Authority fails to act within 30 days after a petition has been filed, the request for reconsideration shall not be deemed to have been denied. Decisions not to reconsider a wastewater discharge permit, not to issue a wastewater discharge permit, not to modify a wastewater discharge permit, or to fail to render a decision within the prescribed time shall be considered final administrative action for purposes of judicial review.
- (f) Aggrieved parties seeking judicial review of the final administrative action regarding a wastewater discharge permit decision must file for a writ of review with the Superior Court of the Virgin Islands within 30 days from the day of final administrative decision,

#### **29 VIRR § 496c2.26: Permit Modification**

The Authority may modify a wastewater discharge permit for good cause, including, but not limited to, the following reasons:

- (a) To incorporate any new or revised Territorial or Federal standards or requirement;
- (b) To address significant alterations or additions to the user's operation, processes, or wastewater volume or character since the time of the wastewater discharge permit issuance;
- (c) A change in the Authority's sewage system that requires either a temporary or permanent reduction or elimination of the authorized discharge;
- (d) Information indicating that the permitted discharge poses a threat to the Authority, its personnel, the public or the receiving waters;
- (e) Violation of any terms or conditions of the wastewater discharge permit;
- (f) Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting;
- (g) Revision of or a grant of variance from categorical pretreatment standards pursuant to 40 CFR 403.13;
- (h) To correct typographical or other errors in the wastewater discharge permit.

## **29 VIRR § 496c2.27: Permit Revocation; Void Permits**

(a) The Authority may revoke a wastewater discharge permit for good cause, including but not limited to: inadequate notice of alterations to equipment and wastewater stream; misrepresentation and falsification of material facts; tampering with monitoring devices; failure to meet federal or territorial effluent standards; failure to pay requisite user fees or fines; failure to give notice to the Authority as may be required by these rules and regulations, or failure to meet the standards of the permittee's discharge permit(s).

(b) The wastewater discharge permit shall be void upon cessation of operations or transfer or partial transfer of business ownership.

## **29 VIRR § 496c2.28: Permit Reissue**

A user with an expiring wastewater discharge permit shall apply for a wastewater discharge permit reissuance by submitting a complete permit application in accordance with these rules and regulations a minimum of ninety (90) days prior to the expiration of the user's existing wastewater discharge permit.

## **CHAPTER 3: USER REPORTING REQUIREMENTS**

### **29 VIRR § 496c3.1: User Reports**

(a) Within such time as required by the Authority but no more than 180 days from the effective date of these rules and regulations, existing commercial and industrial users currently discharging to or scheduled to discharge to the publicly owned treatment works shall submit to the Authority a report which contains:

(1) initial information giving name and address of the facility, including the name of the operator and owner;

(2) a list of any environmental control permits held by or for the facility;

(3) a brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such user. This description should include a schematic process diagram, which indicates points of discharge to the publicly owned treatment works from the regulated processes;

(4) flow measurement information showing the measured average daily and maximum daily flow, in gallons per day to the treatment works from the regulated process streams and other streams, as necessary to allow use of the combined waste stream formula set out in 40 CFR 403.6 (e); and

(5) measurement of pollutants and the pretreatment standards applicable to the process.

(b) Commercial and industrial users shall be obligated to provide sampling reports and analysis, should the Authority deem it appropriate, particularly as concerns representative samples of daily concentrations of pollutants being discharged. Such sampling and analysis shall be certified by

the user's authorized representative and a qualified wastewater professional if required by the Authority.

### **29 VIRR § 496c3.2: Compliance Reports**

(a) The Authority may, when appropriate, require a commercial or industrial user of the publicly owned treatment works to provide compliance reports which contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards. The events include, but are not limited to hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operations.

(b) No increment referred to above shall exceed the time reasonably set forth by the Authority, or as required by Territorial or Federal law, or court order.

### **29 VIRR § 496c3.3: Changed Conditions**

(a) Each user must notify the Authority of any planned significant changes to the user's operations or system, which might alter the nature, quality or volume of its wastewater at least thirty (30) days prior to the change. The Authority may require the user to submit such information as may be deemed necessary to evaluate the changed conditions including the submission of a wastewater discharge permit application in accordance with these rules and regulations.

(b) The Authority may issue a wastewater discharge permit or modify an existing wastewater discharge permit in response to changed conditions or anticipated changed conditions.

(c) Significant changes include, but are not limited to flow increases of ten percent (10 %) or greater and the discharge of any previously unreported pollutants.

### **29 VIRR § 496c3.4: Reports of Potential Hazards and Problems**

(a) In the case of any discharge, including but not limited to accidental discharges, discharges of a non-routine, episodic nature, a non-customary discharge that may cause adverse impacts to the publicly owned treatment works, the user shall immediately telephone and notify the Authority of the incident. The notification shall include the identity of the reporter location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.

(b) Within five (5) days following such discharge, the user shall, unless waived by the Authority, submit a detailed written report describing the cause(s) of the discharge and measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, penalty or other liability which may be incurred as a result of damage to the publicly owned treatment works, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties, or other liability which may be imposed pursuant to law or these rules and regulations.

(c) A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees who to call in the event of an accidental discharge described above. Employers shall ensure that all employees who may cause such a discharge to occur are advised of the emergency notification procedure.

### **29 VIRR § 496c3.5: Notice and Reporting Violations; Sampling**

(a) If sampling performed by a user indicates a violation, the user must notify the Authority within twenty-four (24) hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Authority

(b) All pollutant analyses, including sampling techniques to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses must be performed in accordance with procedures approved by the EPA.

### **29 VIRR § 496c3.6: Monitoring Devices, Collection of Samples; Record Keeping**

(a) When required by the Authority, any person who directly or indirectly discharges wastewater to the Authority's sewage system shall install at his expense suitable control or measuring devices and such manholes, chambers, meters (e.g., flow, pH), and other appurtenances necessary for the observation, sampling and measurement of waste, pollutants, and/or water being discharged. Such control or measuring devices and manholes, chambers, or meters and other appurtenances shall be installed at a safe location acceptable to the Authority, shall be accessible to the Authority's staff and monitoring equipment, and where required by the Authority, shall be compatible with the Authority's monitoring equipment. The control or measuring devices and related appurtenances shall be designed and constructed according to applicable engineering standards and shall be properly maintained and calibrated so as to ensure accurate measurement. The Authority may require that the control or measuring devices and related appurtenances be subject to Authority approval.

(b) All measurements, tests, and analyses of the characteristics of wastewater that are required by these rules and regulations or any permit or order issued thereunder shall be conducted according to applicable EPA approved procedures unless otherwise authorized or required by the Authority and EPA. If there is no applicable EPA approved procedure, the Authority may specify a procedure to be used.

(1) Any sample analysis required shall be performed by an independent laboratory with Department of Planning and Natural Resources/Division of Environmental Protection Agency (DEP) certification or National Environmental Laboratory Accreditation Program (NELAP) accreditation for the parameters being analyzed. The use of a laboratory with provisional DEP certification is prohibited for the parameters for which it has provisional certification, unless the Authority determines that the factors resulting in the provisional certification should not adversely affect the quality of the analyses the laboratory may submit. A sample analysis performed by a laboratory without DEP certification or NELAP accreditation for the parameter may be submitted with the



approval of the Authority. The Authority may grant such approval where DEP does not certify and NELAP does not accredit for the parameter to be analyzed.. The Authority may require a person to submit a copy of the "Massachusetts Certification for Chemical Analysis of Waters" or the NELAP Certification of Accreditation, whichever is applicable, for each laboratory that performs an analysis submitted to the Authority by or on behalf of the person. The Authority may limit the laboratories a person may use for any report required by the Authority. The Authority may specify the quality assurance/quality control methods to be performed by a laboratory for any report required by the Authority.

(2) The sampling required by the Authority shall be performed by a DEP certified or NELAP accredited independent laboratory unless otherwise specified or approved by the Authority. The Authority may by permit or order require sample collection to be performed by specified personnel at specified location(s).

(3) The Authority may require a person to submit blind performance evaluation samples for analysis, along with its required samples to the laboratory that performs the analysis.

(4) The Authority may require a person to submit a complete data package, including chain of custody records, raw data, and quality assurance/quality control related results, with a report required by the Authority.

(5) The Authority may require that discharge monitoring reports be submitted to it on paper copy, and/or on computer diskette, and/or by electronic means.

(6) The Authority may require that analytical data and reports, including a complete data package be submitted to it directly by the laboratory that performed the analyses.

(c) All reports and documents required to be submitted to the Authority by federal regulations, or by a permit, notice, or order shall be submitted as required, shall contain all of the information in the format required by the Authority, and shall be received by the Authority, and by any other person or entity specified by the Authority to receive the report or document no later than the due date. If the Authority determines that a report or document is insufficient, incomplete, inadequate, or late, the Authority may:

- (1) require the submittal of additional or revised reports or documents; and/or
- (2) take enforcement action pursuant to 496c2.15,

(d) Report Containing an Elevated Detection Limit.

(1) An elevated detection limit means a detection limit above a parameter's discharge limit (as set by permit or order issued thereunder), generally caused by interference or another factor that prevented the laboratory from quantifying a parameter at or below the discharge limit for that parameter. For any parameter that is prohibited from being discharged, an elevated detection limit shall be a detection limit that is greater than the method detection limit for that parameter.

(2) Any report of a sample analysis required to be submitted to the Authority under 496c2.26, or any permit or order issued thereunder that contains an elevated detection limit for a parameter shall be considered an incomplete report. Within fifteen(15) days of receiving a report containing an elevated detection limit, the person required to submit

the report to the Authority shall resample the waste stream, analyze the sample for the parameters that had the elevated detection limit, and submit the report of the analysis to the Authority. Where the report of resampling again contains an elevated detection limit for the same parameter as the previous report, the person shall, with the report of resampling, submit a report to the Authority explaining why the laboratory has been unable to obtain a lower detection limit and containing an action plan and or time schedule to correct the problem. The report shall be subject to modification by the Authority. There shall be a presumption that the parameter with an elevated detection limit is in violation of the discharge limits. The presumption will be overcome if the person corrects the problem causing the elevated detection level according to the time schedule in its report, and the person's sample results are then determined to be in compliance.

(e) Users subject to the reporting requirements of these rules and regulations shall retain and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by these regulations and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements.

(1) Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples the dates analyses were performed who performed the analyses the analytical techniques or methods used, and the results of such analyses.

(2) These records shall remain available for a period of at least three (3) years following their creation. This period shall be automatically extended for the duration of related litigation concerning the user or Authority, or where the user has been specifically notified of a longer retention period by the Authority.

### **29 VIRR § 496c3.7: Signatories and Certifications**

Each permit application, discharge monitoring report, compliance report, and any other report or notification required by these rules and regulations or a permit or order issued thereunder shall be signed by an authorized representative of the person submitting the application or report, and shall be certified as accurate. An authorized representative shall be an individual described in 40 CFR § 403.12(l). The Authority may require documents containing a certification consistent with the following:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information to the Authority"..

If the Authority requires that discharge monitoring reports be submitted to it on computer diskette or by electronic means, and/or authorizes the submission of such reports directly from laboratories used by the person responsible for submitting the report, it may require a certification similar to the above certification from the person, authorizing submissions directly from the laboratory.

## **29 VIRR § 496c3.8: Compliance Measurement Location & Compliance Monitoring**

(a) All limitations imposed shall be applied at the end of the pretreatment process line, at the end of the process line if there is no pretreatment, or at or near the discharge location if there is no pretreatment or process line. This shall not be construed to authorize a person to introduce a pollutant into a waste stream after the compliance measurement location; rather, a sample taken at the compliance measurement location is intended to measure the pollutants in a discharge to the sewer before dilution of the waste stream.

Where it deems it appropriate, the Authority may by permit or impose alternative limits or compliance measurement locations to assure compliance with applicable rules and regulations and with Federal and Territorial requirements. This may include use of the combined wastestream formula when authorized by EPA regulations or use of a dilution factor when more than one stream is combined.

The Authority may require samples from individual process waste streams whether such waste streams are pretreated prior to discharge or not. The Authority may require that compliance measurement locations be clearly marked and/or photographed.

The Authority shall have the right to enter the premises of any user to determine whether the user is complying with all requirements of these rules and regulations and any wastewater discharge permit or order issued hereunder. Users shall allow the Authority ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties:

(a) Where a user has security measures in force, which require proper identification and clearance before entry into its premise, the user shall make necessary arrangements with its security personnel so that, upon presentation of suitable identification, the Authority will be permitted to enter immediately for the purposes of performing specific responsibilities.

(b) The Authority shall have the right to set up on the user's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the user's operations.

(c) The Authority may require the user to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the user at its own expense. All devices used to measure wastewater flow and quality shall be calibrated at least daily to ensure their accuracy.

(d) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the user at the written or verbal request of the Authority and shall not be replaced. The costs of clearing such access shall be borne by the user.

(e) Unreasonable delays in allowing the Authority access to the user's premises shall be a violation of these rules and regulations which may result in revocation of the permit or license issued to the user by the Authority.

## **29 VIRR § 496c3.9: Search Warrant**

If the Authority has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of these rules and regulations, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the Authority designed to verify compliance with these rules and regulations or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the Authority may seek issuance of a search warrant from the Virgin Islands Department of Justice, The legal remedy set forth here shall not be considered exclusive. The Authority may pursue other remedies available to it by law, including, but not limited to criminal prosecution or seeking injunctive relief in a court of competent jurisdiction.

## **CHAPTER 4: ON-SITE WASTEWATER SYSTEMS**

### **29 VIRR § 496c4.1: On-Site Domestic Wastewater Systems**

The Authority, pursuant to Title 29, Section 500q, Virgin Islands Code, has the authority to inspect for compliance all septic systems in the Territory. In addition to the commercial, industrial and governmental septic wastewater systems referred to hereinabove, the Authority is authorized to inspect for compliance on-site, underground domestic wastewater septic tank disposal systems.

### **29 VIRR § 496c4.2: Septic Tank Construction**

Where no public sewer connection is reasonably available to a private owner of property, a private on-site wastewater sewage system may be constructed. The on-site system must be constructed in such a manner as to receive all wastewater. Such system must be constructed, reconstructed, or modified in accordance with the Building Codes of the Territory and contain a building sewer pipe to carry wastewater from the building to the public sewer, if appropriate, or to the on-site wastewater system, a septic tank, and an absorption system.

### **29 VIRR § 496c4.3: Prohibited Acts**

(a) No ground water drainage, drainage from roofs, roads, yards, or other similar sources shall be caused or allowed to discharge into any part of an on-site wastewater system. Nor shall an owner or occupant of private property, or any other person, place within any portion of an on-site wastewater system any chemicals, paints, or other substance detrimental to the on-site system.

(b) Effluent from any on-site wastewater system shall not be discharged into or onto any surface waters, ground, used or unused well, crevice, or hole. Nor shall any discharge from an on-site wastewater system be deposited into any public sewer system without a permit from the Authority, or other appropriate governmental agency of the Territory.

### **29 VIRR § 496c4.4: Unapproved On-site System**

Where, upon inspection, the Authority finds an on-site wastewater system to be dangerous, unsanitary, improperly constructed, or malfunctioning such as to be a health hazard and/or a public nuisance, the Authority may order the owner to take the necessary action to correct the system so as to bring it into compliance with the law and these rules and regulations.

### **29 VIRR § 496c4.5: Abandonment of On-site System**

The owner of real property serviced by an on-site wastewater system who has abandoned or discontinued the use of the system shall render it safe by having the septic tank pumped out and disposed of by a licensed hauler in an approved manner at an approved site. The septic tank shall then be filled completely with sand, gravel, or earth within 30 days of the abandonment or discontinued use of the real property. The owner may also remove the septic tank within 30 days if he/she so chooses.

#### **29 VIRR § 496c4.6: Remedies**

Notwithstanding any other legal or administrative remedy set forth herein, the Authority may levy such fines or other penalties on owners of on-site wastewater systems for non-conformity, or non-compliance with the orders of the Authority or the laws of the Virgin Islands in effect and applicable to the rights and obligations of the Authority.

The Authority shall impose a fine on such owners of non-compliant onsite wastewater systems an initial amount of \$250.00 per day and \$100.00 thereafter for each day of non-compliance.

### **CHAPTER 5: PUBLIC DOMAIN**

#### **29 VIRR § 496c5.1: Public Information; Newspaper Publication**

(a) Information and data on a user obtained from reports, surveys, wastewater discharge permit applications, wastewater discharge permits, and monitoring programs, and from the Authority inspection and sampling activities shall be in the public domain and available to the public without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the Authority that the release of such information would divulge information processes, or methods of production entitled to protection as trade secrets under applicable Territorial or Federal law. Any such request must be asserted at the time of submission of the information or data. However, wastewater constituents, characteristics, and other effluent data will not be recognized as confidential information and will be available to the public without restriction.

(b) The Authority shall publish annually, in one or more media outlets of general circulation, in the area where the publicly owned treatment works are located, a list of the users, public or private, who or which during the previous twelve (12) months were in significant non-compliance with applicable pretreatment standards and requirements. In publishing such information the Authority shall set forth the specific nature of the significant non-compliance of the particular user.

### **CHAPTER 6: ADMINISTRATIVE REMEDIES**

(a) Whenever, on the basis of any available information, the Authority finds that a person has violated, is violating, or threatens to violate 29 VIRR § 496, any Notice of Non-Compliance, Order, or Permit issued pursuant to Authority regulations, or any settlement agreement to which the Authority is a signatory and which binds the person or his assignee or successor, or that a person has made a false representation in an application, record, or report to the

Authority, or has falsified, tampered with, or rendered inaccurate a monitoring device or method, or failed to pay a penalty or fee due to the Authority, the Authority may take one or more of the following actions:

- (1) Issue a Notice of Non-Compliance;
  - (2) Issue an administrative order requiring the person to comply with any action the Authority is authorized to require;
  - (3) Assess a civil administrative penalty;
  - (4) Revoke, modify, deny, suspend, or refuse to renew a permit issued under §496c2.17;
  - (5) Terminate or suspend water and/or sewer services provided to the person; Institute a Court action for;
    - (1) Civil penalties;
    - (2) Criminal fines and/or other criminal punishment;
    - (3) Injunctive relief, including the issuance of an injunction or a temporary restraining order;
    - (4) Reimbursement of costs and/or damages resulting from the violation or threatened violation; and;
    - (5) Any other judicial relief authorized by law or regulations.
- (b) Require the person to attend a meeting at the Authority during business hours or at any other reasonable time to discuss its violations or threatened violations, the remedial actions that it shall take, and the Authority's response thereto under §3496c5.3.
- (c) Enter into a Consent Agreement or Settlement Agreement with the person in which the person agrees to take actions that the Authority shall require under §496c5.2 and §496c5.5, including most of pay penalties to the Authority; and
- (d) Take any other action authorized by law.

#### **29 VIRR § 496c6.1: Notice of Non-Compliance**

(a) When the Authority finds that a user has violated, or continues to violate any provision of these rules and regulations relating to a wastewater discharge permit issued by the Authority, the Department of Planning and Natural Resources, the Department of Health, the Coastal Zone Management Commission, or any other relevant government agency or commission relating to the construction of wastewater treatment facilities or pretreatment standards or requirements, the Authority may serve upon that user a written notice of non-compliance or equivalent notice of violation setting forth the specific rule, law or order of which the user is in non-compliance.

(1) A Notice of Non-Compliance shall identify each requirement the Authority asserts was violated by the person to whom the Notice of Non-Compliance is issued, the occasion(s) that each requirement was violated, and shall require the person to whom the Notice of Non-Compliance was issued to:

- (a) comply by a date certain with the requirement(s) identified in the Notice of Non-Compliance or Non-Compliance; and
- (b) submit to the Authority by a date certain a written report describing the measures the Person will take to achieve compliance with the requirements

identified in the Notice of Non-Compliance, and the date by which such measures will be taken.

- (2) A Notice of Non-Compliance shall notify the Person of its right to request reconsideration of the Notice of Non-Compliance.
- (3) A person who seeks a later compliance date than the compliance date required by a Notice of Non-Compliance shall have the burden to establish:
  - (a) that the person has not had a reasonable time in which to comply since the Requirement became applicable to the person;
  - (b) the existence of a substantial non-monetary impediment that prevents the person from meeting the compliance date;
  - (c) that the person cannot reasonably and feasibly cease discharging to the sewer system until it achieves compliance;
  - (d) a schedule for achieving compliance within a reasonable time and that it can remain in compliance after a date certain;
  - (e) specific interim measures the person will take to minimize the instances and severity of the Non-Compliance until it achieves compliance within a reasonable time; and
  - (f) that the person's discharge does not have a potential to violate or otherwise have an adverse impact on the Authority or on any tributary to the Authority sewer system.

(4) The purpose of a Notice of Non-Compliance is to provide a formal notice of one or more violations and to set a compliance date or require the submission of a compliance schedule. A Notice of Non-Compliance shall not be construed as an authorization or approval to violate any law or Authority regulation or requirement prior to achieving compliance.

(b) The user shall have seven (7) business days from receipt of a written notice to advise the Authority, in writing of his or its plan for the satisfactory correction of the non-compliant act or omission and preventive action taken to avoid a repeat of the non-compliant conduct or omission. Submission of a corrective action plan in no way relieves the user of liability for any violations occurring before or after receipt of the notice of Non-Compliance.

(c) Nothing in this section shall limit the Authority from taking any immediate action, or any other reasonable enforcement action to correct an emergency which threatens the environment and/or the public health and welfare of the community.

#### **29VIRR § 496c6.2: Administrative Orders and Memorandums of Understanding**

(a) The Authority may, where reasonable and in the best interest of the Authority and the public, enter into a memorandum of understanding, consent order, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for non-compliance with the rules set forth herein. Such documents will include specific

action to be taken by the user to correct the non-compliance within a time period specified by the document. Such documents shall have the same force and effect as any administrative order issued after appropriate due process is afforded a user of the publicly owned treatment works or owner of an on-site wastewater system.

(b) The Authority may issue an administrative order to require a person to:

- (1) Cease and desist a violation and/or any actions that cause or threaten to cause a violation;
- (2) Submit reports, subject to such modifications as the Authority deems appropriate, identifying the measures the person will take to correct or eliminate a violation or threatened violation and the dates by which the measures will be taken;
- (3) Take specific measures to correct or eliminate a violation or threatened violation, including pretreatment changes, process changes, and/or the implementation of measures to reduce the use of toxic materials in the person's production process;
- (4) Follow an implementation schedule requiring specific actions according to a time schedule, including but not limited to submitting plans identifying all wastewater piping and sewer connections, dye testing of lines and pipes, installing improved or additional sampling locations and obtaining expert advice and assistance;
- (5) Follow a schedule of sampling, analyzing, and reporting sampling results to the Authority; and
- (6) Take any other action the Authority is authorized by law or regulation to require concerning the violation or threatened violation.

(c) An Order shall:

- (1) State with reasonable specificity the nature of the violation or threatened violation;
- (2) Specify a time for compliance with the terms of the Order; and
- (3) Notify the person of its right to request reconsideration of the Order.

(d) An Order may be issued as part of a Notice of Non-Compliance.

### **29 VIRR § 496c6.3: Show Cause Hearing**

The Authority may, order in writing a user which has violated or continues to violate, any provision of these rules and regulations a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement to appear before the Executive Director of the Authority or his representative and show cause why a proposed enforcement action should not be taken. Notice shall be personally served on the user or user's resident agent specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least seven (7) days prior to the hearing date. A show cause hearing shall not bar the Authority from taking any other action against the user.



#### **29 VIRR § 496c6.4: Compliance Orders; Cease and Desist Orders**

(a) When the Authority finds that a user has violated, or continues to violate any provision of these rules and regulations, a wastewater discharge permit or order issued hereunder or any other pretreatment standard or requirement, the Authority may issue an order to the user responsible for the discharge directing that the user come into compliance within a specified time. If the user does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated.

(b) Compliance orders may also contain other requirements to address the Non-Compliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a pretreatment standard or requirement, nor does a compliance order relieve the user of liability for any violation, including any continuing violations.

(c) The Authority may also issue a cease and desist order if it finds user violation, or continued violations of these rules and regulations and there is a reasonable belief the conduct may recur or is recurring. The cease and desist order shall direct the user to immediately cease all violations, comply with all requirements of these rules and regulations and to immediately take such appropriate remedial or preventive action as may be needed to properly address an actual, threatened or recurring violation. The Authority may also halt or terminate the user's operations or the discharge.

(d) Neither the issuance of a compliance order, nor the issuance of a cease and desist order shall constitute a bar against or a prerequisite for taking any other action against the user.

#### **29 VIRR § 496c6.5: Administrative Fines**

(a) If the Authority finds that a user has violated, or continues to violate any provision of these rules and regulations, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Authority may impose a fine upon such user in an amount not to exceed \$5,000.00 per day, per violation; the specific fine to be imposed shall be based on the guidelines set forth in Appendix A.

(b) Unpaid charges, fines, and penalties shall after ten (10) calendar days be assessed an additional penalty based on the unpaid balance, and interest at the prevailing legal rate for local judgments shall accrue thereafter on a monthly basis. A lien against the user's real or personal property may be placed for unpaid charges, fines, and penalties.

(c) Users desiring to dispute such fines must file a written request for the Authority to reconsider the fine along with full payment of the fine within ten (10) calendar days of being notified of the fine. Where a request has merit, the Authority may convene a hearing before the Executive Director of the Authority or his/her designee on the matter. In the event the user's appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the user. The Authority may add the costs of preparing administrative enforcement actions such as notices and orders to the fine.

(d) Issuance of a Notice of Non-Compliance, order, ruling, permit, or other documents is not a prerequisite for the issuance of an administrative fine. A penalty may be assessed: to compensate the Authority or others for damages suffered or costs incurred as a result of each violation; for any actual or potential impact of the violation on the public health, safety, and welfare and the environment; to help assure that the violator did not have an economic gain from its Non-Compliance, as a deterrent to future violations by the Person subject to the penalty and by others; for intentional violations; and/ as part of a process of escalating enforcement to gain compliance.

#### **29 VIRR § 496c6.6: Emergency Suspensions and Terminations**

(a) The Authority may immediately suspend a user's discharge, after informal notice to the user, whenever such suspension is necessary to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of the public. The Authority may also suspend a user's discharge after notice and opportunity to be heard, if the discharge threatens to interfere with the operation of the publicly owned treatment works or which presents or may present an endangerment to the environment.

(b) Any user notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the suspension order, the Authority may take such steps as deemed necessary, including immediate severance of the sewer connection to prevent or minimize damage to the publicly owned treatment works, its receiving stream, or endangerment to any individuals or the public health and welfare. At its discretion, the Authority may allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the Authority that the period of endangerment has passed, unless termination proceedings have been initiated against the user.

(c) A user responsible, in whole or in part for any discharge presenting imminent endangerment shall submit a detailed written statement describing the causes of the harmful contribution and the measures taken to prevent any future occurrence to the Authority prior to the date of any show cause or termination hearing.

(d) Nothing in this Section shall be interpreted as requiring a hearing prior to any emergency suspension under this Section.

#### **29 VIRR § 496c6.7: Termination of Discharge Privileges**

A User may be subject to termination of its discharge privileges if the user:

(a) Violates the terms of its wastewater discharge permit conditions;

(b) Fails to accurately report the wastewater constituents and characteristics of its discharge;

(c) Fails to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;

(d) Refuses the Authority reasonable access to the user's premises for the purpose of inspection, monitoring, or sampling; or

(e) Violates the pretreatment standards in Chapter 2 or 3 of these rules and regulations.

The user shall be notified in writing of the proposed termination of its discharge privileges and the reasons therefor. The User will be given an opportunity to show cause why the proposed action should not be taken. Exercise of this option by the Authority shall not be a bar to, or a prerequisite for, taking any other action against the user.

#### **29 VIRR § 496c6.8: Judicial Enforcement**

Nothing herein before nor hereinafter set forth in these rules and regulations shall be construed to preclude the Authority, its attorneys, or other appropriate agencies of the Territorial or Federal government from proceeding administratively or in a court of competent jurisdiction against any user of the publicly owned treatment works or any owner of an on-site wastewater system for violations of these rules and regulations and to seek relief by a restraining order, injunctive or other equitable relief, civil remedies, and/or to seek prosecution for criminal violations of relevant laws.

#### **29 VIRR § 496c6.9: SUPPLEMENTAL ENFORCEMENT ACTION**

The Authority may decline to issue or reissue a wastewater discharge permit to any user who has failed to comply with any provision of these rules and regulations, a previous wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, unless such user first:

- (1) files a satisfactory bond, payable to the Authority, in a sum not to exceed a value determined by the Authority to achieve consistent compliance by the user; and,
- (2) obtains appropriate liability insurance and other financial assurances sufficient to restore or repair damage to the publicly owned treatment works caused by the user's discharge.

#### **29 VIRR § 496c6.10: Pretreatment Charges and Fees**

The Authority may adopt reasonable fees for reimbursement of costs of setting up and operating the Authority's Pretreatment Program, which may include:

- (a) Fees for wastewater discharge permit applications including the cost of processing such applications;
- (b) Fees for monitoring, inspection, and surveillance procedures including the cost of collection and analyzing the user's discharge and reviewing monitoring reports submitted by users;
- (c) Fees for reviewing and responding to accidental discharge procedures and construction;
- (d) Fees for filing appeals; and
- (e) Other fees the Authority may deem necessary to carry out the requirements contained herein. These fees relate solely to the matters covered by these rules and regulations and are separate from all other fees, fines, and penalties chargeable by the Authority.

#### **29 VIRR § 496c6.11: Severability**

If any provision of these rules and regulations is held invalid in its application to any person, business or agency of the government by any court of competent jurisdiction, the application of the remaining provisions to any person, business, or government agency shall not be affected and shall continue in full force and effect.

## APPENDIX A

### Determination of Gravity-Based Penalties

The seriousness of the violation shall be taken into account in assessing penalties. The gravity-based penalty is determined according to the seriousness of the violation. The seriousness of a violation is based on two factors, which are used to assess the appropriate gravity-based penalty:

- Potential for harm; and
- Extent of deviation from a statutory or regulatory requirement.

#### **A. Potential for Harm**

The environmental laws were promulgated in order to prevent harm to human health and the environment. Thus, noncompliance with any requirement could result in a potential for harm. The potential for harm resulting from a violation shall be determined by such factors as the likelihood of exposure to harm posed by noncompliance as follows.

Major (1) the violation poses definite exposure to harm or damage; and

(2) the actions have an effect on the statutory regulatory purposes or procedures for implementing the rules and regulations;

Moderate (1) the violation poses a significant likelihood of exposure to harm or damage; and

(2) the actions have or may have a significant adverse effect on the statutory regulatory purposes or procedures for implementing the laws.

Minor (1) the violation poses a relatively low likelihood of exposure to harm or damage; and

(2) the actions have or may have an adverse effect on the statutory or regulatory purposes or procedures for implementing the rules and regulations.

#### **B. Extent of Deviation from Requirements**

The “extent of deviation” from the environmental law or its regulatory requirements relates to the degree to which the violation renders inoperative the requirement violated. In any violated situation, a range of potential noncompliance with a requirement exists. Stated otherwise,, a violator may be substantially in compliance with the provisions of the requirement or it may have totally disregarded the requirement (or a point in between). As with potential for harm, extent of deviation may be major, moderate or minor. In determining the extent of deviation, the following definitions should be used:

- Major: The violator deviates from the requirements of the regulation or statute to such an extent that there is substantial noncompliance.
- Moderate: The violator significantly deviates from the requirements of the regulation of statute but some of the requirements are implemented as intended.
- Minor: The violator deviates somewhat from the regulatory or statutory requirements but most of the requirements are met.

C. Penalty Assessment Matrix

Each of the above factors, potential for harm and extent of deviation from a requirement forms one of the axes of the penalty assessment matrix. The matrix has nine cells, each containing a penalty range. The specific cell is chosen after determining which category (major, moderate, or minor) is appropriate for the extent of deviation factor. The complete matrix is set forth hereinbelow.

The lowest cell (minor potential for harm/minor extent of deviation) contains a penalty range from \$5,000 to \$9,999. The highest cell (major potential for harm/major extent of deviation) is limited by the maximum statutory penalty allowance of \$50,000 per day per violation.

The selection of the exact penalty amount within each cell is left to the Executive Director or his designee's discretion in any given case. The Executive Director or his designee shall consider the seriousness of the violation only in selecting the penalty amount within the range. The reasons the violation was committed, the intent of the violator, and the other factors related to the violator are not considered at this point; they shall be considered at the adjustment stage.

Extent of Deviation from Requirements

		<b>Major</b>	<b>Moderate</b>	<b>Minor</b>
<b>Potential for Harm</b>	<b>Major</b>	<b>\$50,000</b>	<b>\$44,999</b>	<b>\$39,999</b>
				<b>TO</b>
				<b>\$35,000</b>
	<b>Moderate</b>	<b>\$34,999</b>	<b>\$29,999</b>	<b>\$24,999</b>
				<b>TO</b>
				<b>\$20,000</b>
	<b>Minor</b>	<b>\$19,999</b>	<b>\$14,999</b>	<b>\$9,999</b>
				<b>TO</b>
				<b>\$5,000</b>

After determining the appropriate penalty based on gravity and where appropriate, economic benefit, the penalty may be adjusted upwards or downwards to reflect particular circumstances surrounding the violation. The factors that should be considered are:

1. Good faith efforts to comply/lack of good faith;
2. Degree of willfulness and/or negligence;
3. History of noncompliance;
4. Ability to pay; and
5. Other unique factors.

These factors (with the exception of factors which increase the penalty such as history of noncompliance) are to be considered after proposing the penalty during the settlement stage. In certain situations, the Authority may find that a particular person or firm has violated several regulations. A separate penalty shall then be assessed for each violation that results from an independent act (or failure to act) by the violator and is substantially distinguishable from any other charge for which a penalty is to be assessed. In many cases, violations of different sections of the regulations constitute independent and substantially distinguishable violations. For penalty purposes, each of the violations shall be assessed separately and the amounts totaled.